

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 7037      PCB JDC 20-01      Constitutional Amendments  
**SPONSOR(S):** Judiciary Committee; State Affairs Committee; Judiciary Committee; Grant, J.  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	12 Y, 6 N	Jones	Luczynski
1) Appropriations Committee	20 Y, 10 N	Cobb	Pridgeon
2) State Affairs Committee	15 Y, 7 N, As CS	Toliver	Williamson
3) Judiciary Committee	11 Y, 6 N, As CS	Jones	Luczynski

### SUMMARY ANALYSIS

The Florida Constitution may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative. For a citizen initiative to be placed in the constitution:

- A sponsor must register as a Florida political committee and gather a sufficient number of signatures from Florida voters;
- The Florida Supreme Court must review the proposed amendment to ensure legal compliance;
- The Financial Impact Estimating Conference (FIEC) must analyze the proposal's financial impacts; and
- At least 60 percent of the voters voting on the proposed amendment must vote yes.

CS/CS/HB 7037 changes the process for amending the Florida Constitution by citizen initiative by:

- Revising the role of FIEC to require FIEC to estimate the proposal's financial impact on state and local governments and the state budget.
- Requiring the Attorney General to ask the Supreme Court to determine whether the proposal violates the U.S. Constitution.
- Providing that the President of the Senate and the Speaker of the House of Representatives may direct legislative staff to analyze any other impacts of the proposal.
- Increasing the number of petitions that must be gathered and the number of districts in which they must be gathered before the Secretary of State refers a proposal to the Attorney General and FIEC.
- Creating a cause of action to challenge a petition circulator's failure to register.
- Providing that a signature is valid until the next February 1 of an even-numbered year, which prevents a signature from being held over for a subsequent election.
- Providing that a signature obtained illegally or by an unregistered paid petition circulator is invalid.
- Allowing a supervisor of elections an extra 30 days to verify a petition form submitted before December 1 of an odd-numbered year.
- Requiring a supervisor of elections to charge the actual cost for verifying a petition signature and requiring the Department of State to determine the actual cost amount annually.
- Allowing the Division of Elections within the Department of State or a supervisor of elections to provide a petition form in PDF format, with printing costs to be borne by the sponsor.
- Requiring the ballot to include statements indicating:
  - The name of the sponsor.
  - Whether the sponsor used out-of-state petition circulators.
  - Whether FIEC estimates a negative or indeterminate fiscal impact or cannot reach a consensus.
- Requiring the text of a proposed constitutional amendment in each polling place.

The bill may have an indeterminate fiscal impact on state government and on local governments and is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Florida Constitution is the charter of the liberties of Floridians.<sup>1</sup> It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative.<sup>2</sup> A citizen initiative must embrace only one subject,<sup>3</sup> unless it concerns limiting the power of government to raise revenue, but proposals originating from the other sources are not so limited.<sup>4</sup>

The Florida Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of signatures on a petition to place the proposal on the ballot.<sup>5</sup> The petition must contain the signatures of a number of voters equal to 8 percent of the votes cast in the state in the preceding presidential election as well as 8 percent of the votes cast in that election in each of at least half of the congressional districts of the state.<sup>6</sup> The number of signatures required for placement on the 2018 or 2020 ballot is 766,200, with a specified number of that total required to come from at least 14 of the state's congressional districts.<sup>7</sup>

According to the Florida Supreme Court, the Legislature and the Secretary of State (Secretary) are responsible for ensuring ballot integrity and a valid election process.<sup>8</sup> To this end, the Legislature may pass laws regulating the initiative process, which must be either:

- Neutral, nondiscriminatory regulations of petition-circulation and voting procedure explicitly or implicitly contemplated by the constitution; or
- Necessary for ballot integrity.<sup>9</sup>

##### Citizen Initiative Process

Before gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must register as a Florida political committee.<sup>10</sup> After registering, the sponsor must gather the required number of signatures. The sponsor must present each signature to the appropriate supervisor of elections (supervisor) where the signee resides within 30 days of gathering the signature.<sup>11</sup>

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary before collecting signatures.<sup>12</sup> Failure of a paid petition circulator to register before collecting petition forms is a second-degree misdemeanor.<sup>13</sup> The paid petition circulator must provide to the Secretary:

- His or her name, permanent address, temporary address, and date of birth.
- A Florida address where the circulator will accept service of process.

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<sup>1</sup> *Browning v. Fla. Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

<sup>2</sup> Art. XI, Fla. Const.

<sup>3</sup> Art. XI, s. 3, Fla. Const.

<sup>4</sup> Art. XI, ss. 1, 2, 4, 6, Fla. Const.

<sup>5</sup> Art. XI, s. 3, Fla. Const.

<sup>6</sup> *Id.*

<sup>7</sup> FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Feb. 19, 2020).

<sup>8</sup> *Browning*, 29 So. 3d at 1057-58.

<sup>9</sup> *Id.*

<sup>10</sup> Ss. 100.371(2) and 106.03(1)(a), F.S.

<sup>11</sup> S. 100.371(7), F.S.

<sup>12</sup> S. 100.371(3), F.S.

<sup>13</sup> S. 104.187, F.S. See also s. 104.186, F.S. (making it a first-degree misdemeanor to compensate a petition circulator based on the number of petitions gathered).

- A statement that the circulator consents to the jurisdiction of Florida courts.
- Any information required by the Secretary to verify the circulator's identity or address.<sup>14</sup>

In addition, a paid petition circulator must provide an affidavit with each petition form gathered.<sup>15</sup> The affidavit must include the circulator's name and permanent address and a signed statement verifying, under penalties of perjury, that the petition was signed in the circulator's presence.<sup>16</sup>

The date when the elector signs the petition is presumed to be the date of collection.<sup>17</sup> The sponsor incurs a fine of \$50 for each petition form submitted to the supervisor more than 30 days after the elector signed the petition.<sup>18</sup> The sponsor incurs a fine of \$500 for each petition form not submitted to the supervisor.<sup>19</sup> If the sponsor acted willfully, the fines are raised to \$250 and \$1,000 per petition, respectively.<sup>20</sup> The sponsor can avoid fines if it shows that failure to deliver the petitions was due to force majeure<sup>21</sup> or impossibility of performance.<sup>22</sup> If the Secretary believes these provisions have been violated, she may refer the matter to the Attorney General for enforcement.<sup>23</sup>

The Division of Elections (division) within the Department of State (DOS) or the supervisor must provide petition forms to registered paid petition circulators that contain information identifying the paid petition circulator.<sup>24</sup> The division must maintain a database of registered paid petition circulators and petition forms assigned to each, updating the database daily with respect to petition forms.<sup>25</sup> The supervisor must provide the division information relating to petition forms assigned to and received from paid petition circulators.<sup>26</sup>

The sponsor is required to pay the supervisor, in advance, 10 cents for each signature checked or the actual cost of checking the signature, whichever is less.<sup>27</sup>

When a sponsor delivers the collected signatures to the supervisor, the supervisor must check each signature to ensure the:

- Elector's original signature is recorded.
- Elector accurately recorded the date on which he or she signed the form.
- Elector is a qualified and registered Florida voter.
- Form on which the signature is recorded contains the elector's name, address, city, county, and voter registration number or date of birth.<sup>28</sup>

A petition form is invalid if any of the above requirements are not met.<sup>29</sup>

Each supervisor must submit his or her total numbers of valid signatures to the Secretary.<sup>30</sup> Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement to place an amendment on the ballot in at least 25 percent of Florida's congressional districts,<sup>31</sup> the Secretary sends the petition to the:

<sup>14</sup> S. 100.371(4), F.S.

<sup>15</sup> S. 100.371(5), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> S. 100.371(10), F.S.

<sup>18</sup> S. 100.371(7)(a)1., F.S.

<sup>19</sup> S. 100.371(7)(a)2., F.S.

<sup>20</sup> S. 100.371(7)(a), F.S.

<sup>21</sup> "Force majeure" refers to circumstances that cannot be foreseen or controlled, which prevent a person from completing a legal obligation. See *Black's Law Dictionary* 673 (8th ed. 2004).

<sup>22</sup> S. 100.371(7)(b), F.S.

<sup>23</sup> S. 100.371(8), F.S.

<sup>24</sup> S. 100.371(6), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> S. 99.097, F.S.

<sup>28</sup> S. 100.371(11), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S. 15.21(3), F.S. For the 2018 and 2020 elections, the number is 76,632 and must come from at least seven congressional districts. FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Feb. 19, 2020).

- Financial Impact Estimating Conference (FIEC)<sup>32</sup> to complete an analysis on the proposed amendment's fiscal impact within 75 days.<sup>33</sup>
- Attorney General, who in turn petitions the Florida Supreme Court for an advisory opinion as to whether the proposed amendment complies with the single-subject requirement and other legal requirements.<sup>34</sup>

### Fiscal Impact Estimating Conference (FIEC)

After FIEC receives a proposed amendment from the Secretary, FIEC estimates the proposal's projected impacts on the costs and revenues of state and local governments, the state and local economies, and the state budget. FIEC must complete two documents: a financial impact statement and an initiative financial information statement.<sup>35</sup>

The financial impact statement is placed on the ballot to inform voters of the potential financial impact of the proposed amendment.<sup>36</sup> The supervisor must include a copy of the FIEC's financial information summaries in the publication or mailing for sample ballots.<sup>37</sup>

In addition, if the financial impact statement estimates that the proposal will cause increased costs, decreased revenues, a negative impact on the economy, or an indeterminate fiscal impact, the ballot must include a statement indicating such effect in bold font.<sup>38</sup>

The initiative financial information statement is a lengthier, more in-depth analysis of the amendment's fiscal effects. The initiative financial information statement is available on the websites of the Secretary and the Office of Economic and Demographic Research.<sup>39</sup> Each supervisor must include in the publication and mailing of sample ballots the internet addresses where FIEC's full information statements can be viewed and a summary of the statements.<sup>40</sup> A summary of the information statements is also available at each polling place, at the main office of the supervisor, upon request, and on the supervisor's website.<sup>41</sup>

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<sup>32</sup> The Florida Constitution provides that the Legislature must provide by general law for the provision of a statement to public regarding the probable financial impact of any amendment proposed by initiative. Art. XI, s. 5(c), Fla. Const. The Legislature created FIEC to review, analyze, and estimate the fiscal impact of constitutional amendments proposed by citizen initiative. It consists of four persons: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research or a designee; one professional Senate staffer; and one professional House staffer. S. 100.371(13)(c)1., F.S.

<sup>33</sup> See s. 100.371(13), F.S. (providing for the 75-day timeframe, which is tolled when the Legislature is in session).

<sup>34</sup> S. 16.061, F.S.; FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Feb. 19, 2020); art. IV, s. 10, Fla. Const.; art. XI, s. 3, Fla. Const.; *Advisory Opinion to the Attorney General re Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822 (Fla. 2016) (outlining the scope of the Supreme Court's analysis when determining whether to approve a constitutional amendment for placement on the ballot).

<sup>35</sup> S. 100.371(13), F.S.

<sup>36</sup> S. 100.371(13)(a), F.S.

<sup>37</sup> S. 100.371(13)(e)5., F.S.; see also s. 101.20, F.S.

<sup>38</sup> S. 100.371(13)(d), F.S.

<sup>39</sup> S. 100.371(13)(e)5., F.S.

<sup>40</sup> Ss. 100.371(13)(e)5. and 101.20, F.S.

<sup>41</sup> S. 100.371(13)(e), F.S.

## Ballot Placement and Passage

If the Secretary determines that the sponsor has collected the required number of verified signatures by February 1 of the election year,<sup>42</sup> he or she assigns an amendment number and certifies the proposed amendment's ballot position.<sup>43</sup> When the proposal is printed on the ballot, the ballot must also include:

- A ballot summary of up to 75 words summarizing the proposal's purpose.
- A ballot title including a caption of up to 15 words describing the proposal.
- The financial impact statement prepared by FIEC.<sup>44</sup>

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,<sup>45</sup> the proposed amendment is incorporated into the Florida Constitution.<sup>46</sup> The amendment becomes effective on the first Tuesday after the first Monday in January following the election or on a different date if specified in the amendment.<sup>47</sup>

## **Effect of Proposed Changes**

CS/CS/HB 7037 modifies several aspects of the citizen initiative process to increase transparency, strengthen the integrity of the ballot, and reduce costs for the supervisors. Specifically, the bill changes signature gathering requirements, the FIEC analysis process, the ballot language requirements, and the requirements for supervisors.

## Petition Circulators and Petition Form Signatures

The bill provides that if a paid petition circulator collects a petition form but is not registered pursuant to law, or the signature is otherwise not obtained legally, the petition form is invalid. Moreover, a paid petition circulator's registration may be challenged in court. If a court finds that a petition circulator is not properly registered with DOS pursuant to law, the court may enjoin the circulator from collecting signatures or initiative petitions for compensation until he or she is lawfully registered.

The bill also provides that a signature on a petition form is valid only until February 1 of the next even-numbered year. This means that a sponsor may begin gathering signatures for a proposed amendment in February of an even-numbered year for the election to occur two years later, giving a sponsor almost two years to collect signatures. This also prohibits a sponsor from collecting a signature for a particular election and then using the signature for a subsequent election instead.

## Analysis of the Proposed Amendment's Projected Impacts

The bill changes the process for the Secretary to refer a proposed amendment for further analysis by:

- Changing the percentage of signatures required to trigger referral from 10 percent of the number of statewide electors required to place an amendment on the ballot to 50 percent;
- Requiring that the signature threshold be met in the full number of Florida's congressional districts that are required by the Constitution for ballot placement, which is half of the districts; and
- Requiring the Secretary to refer the proposed amendment to the President of the Senate and Speaker of the House of Representatives in addition to the Attorney General and FIEC.

Under the bill, FIEC is no longer required to estimate the proposal's projected impacts on the state and local economies. The bill revises FIEC's role, requiring it to estimate the proposal's:

- Effect on increasing or decreasing revenues or costs to state or local governments; and
- Overall impact to the state budget.

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<sup>42</sup> Art. XI, s. 5(b), Fla. Const.

<sup>43</sup> Ss. 100.371(12) and 101.161, F.S.

<sup>44</sup> S. 101.161(1), F.S.

<sup>45</sup> Art. XI, s. 5(e), Fla. Const.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

The bill allows the President of the Senate and Speaker of the House of Representatives to direct legislative staff to conduct an analysis of the proposal, which may include, but is not limited to, whether the proposal:

- Has undefined terms.
- Conflicts with an existing provision of the Florida Constitution.
- Will cause unintended consequences or economic impacts.

The bill also requires the Attorney General, upon petitioning the Florida Supreme Court to review the legality of a proposed amendment, to ask the Court whether it violates the United States Constitution.

### Ballot Requirements

In addition to the ballot summary and the financial impact statement already required to appear on the ballot, the bill requires the ballot to include the following information:

- The name of the sponsor.
- A statement indicating whether an out-of-state petition circulator was used to collect any petitions.
- A statement in bold capital letters indicating if FIEC:
  - Determines the proposal will have a net negative financial impact on the state budget.
  - Cannot determine the proposal's financial impact.
  - Is unable to reach a consensus on the proposal's financial impact.

### Supervisors of Elections

The bill increases the amount of time for a supervisor of elections to verify a petition signature, from 30 days to 60 days. However, if a supervisor receives a petition form on or after December 1 of an odd-numbered year, the supervisor must verify the petition signature within 30 days. This ensures that a sponsor can meet the February 1 deadline to submit the petition forms to the Secretary of State, as long as the petition form is submitted to the supervisor at least 30 days before February 1.

The bill also requires a supervisor to charge the actual cost for checking a signature on a petition form, with the cost calculated by DOS through rule and updated annually. The bill also gives a supervisor the option to provide petition forms to a sponsor in PDF format instead of requiring that the supervisor print the forms. If the supervisor opts to provide the petition forms by PDF, the printing costs for petition forms would be borne by the sponsor instead of the supervisor.

A copy of the text of a proposed constitutional amendment to be voted upon by the electorate must be provided in a designated area of each polling location. This requirement applies regardless of whether the constitutional amendment is proposed by the citizen initiative process, a joint resolution by the Legislature, or another method.

### Severability Clause and Effective Date

The bill provides that if any provision of the bill is held invalid, the remaining portion of the bill is severed from that provision and should be given full legal effect. The bill is effective upon becoming a law, and its changes apply to all initiative amendments proposed for the 2020 ballot. However, nothing in the bill affects the validity of a petition form gathered before the bill's effective date or a contract entered into before the bill's effective date. Moreover, the bill states that a petition form gathered before the bill's effective date must be governed by the laws in effect when such petition form was gathered.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 15.21, F.S., relating to initiative petitions; s. 3, Art. XI, State Constitution.

**Section 2:** Amends s. 16.061, F.S., relating to initiative petitions.

**Section 3:** Amends s. 100.371, F.S., relating to initiatives; procedure for placement on ballot.

**Section 4:** Amends s. 101.161, F.S., relating to referenda; ballots.

**Section 5:** Amends s. 101.171, F.S., relating to copy of constitutional amendment to be available at voting locations.

**Section 6:** Creates an unnumbered section clarifying that the bill applies to all revisions or amendments by initiative proposed for the 2020 election ballot, but that nothing in the bill affects the validity of any petition gathered prior to the bill's effective date.

**Section 7:** Creates an unnumbered section of law providing that if any provision contained within the bill is found to be invalid, the remaining portion of the bill is severed from that provision.

**Section 8:** Provides an effective date upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an indeterminate positive fiscal impact on state government by not requiring the Attorney General to review the proposed amendment until the sponsor has collected a greater number of signatures in a greater number of congressional districts, which may result in a reduced workload for state government. The bill may also have an insignificant negative fiscal impact to DOS relating to the workload for calculating the actual cost of verifying a petition form; however, it is unlikely that this provision will require additional resources. The bill also requires DOS to provide copies of the text of each proposed constitutional amendment to each supervisor of elections, which may have an insignificant negative impact on DOS.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill requires supervisors to charge the actual cost for verifying petition signatures, which is likely higher than the current rate allowed and may, in turn, have an indeterminate positive fiscal impact on local government revenues.

#### 2. Expenditures:

The bill requires supervisors, when an initiative is submitted to the electors, to include extra language on the ballot. However, the bill may have a positive indeterminate impact on local governments by allowing each supervisor to provide a petition form to a sponsor in PDF format, saving the supervisor printing costs.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on sponsors of constitutional amendments. The bill requires supervisors to charge the sponsor of an amendment the actual cost of verifying petition signatures, which is likely higher than the current rate allowed, and could result in political committees being charged more to verify signatures. In addition, the bill allows each supervisor to provide a petition form to a sponsor in PDF format, which could result in the sponsor having to bear the cost of printing the petition forms.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires each supervisor to include new language on the ballot, thereby increasing the cost of printing and tabulating those ballots; however, an exemption likely applies under Art. VII, s. 18(d), because the bill relates to election laws.

**2. Other:**

The U.S. Supreme Court has held that states have a substantial interest in regulating the ballot-initiative process.<sup>48</sup> Likewise, the Florida Supreme Court has stated that the Legislature and the Secretary are responsible for ensuring ballot integrity and a valid election process. Legislation regulating the initiative process must be either:

- Neutral, nondiscriminatory regulations of petition-circulation and voting procedure explicitly or implicitly contemplated by the constitution; or
- Necessary for ballot integrity.<sup>49</sup>

**B. RULE-MAKING AUTHORITY:**

The bill grants sufficient rulemaking authority to DOS to implement the bill's provisions.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 6, 2020, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the requirement that a supervisor include a copy of all constitutional amendments in each voting booth.

On February 18, 2020, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Required the signature threshold for starting the referral process to be met in all of the congressional districts required by the Florida Constitution, which is half of the districts, or 14.
- Provided each supervisor an extra 30 days to verify any petitions submitted before December 1 of an odd-numbered year.
- Removed requirements that:
  - A sponsor must disclose the percentage of contributions received from in-state persons.
  - The percentage of contributions obtained from in-state donors must appear on the ballot.
- Required that the text of a proposed constitutional amendment must be provided at the polling location.
- Clarified that petitions gathered before the bill's effective date are governed by the law in effect when the petitions were gathered.

The analysis is drafted to the committee substitute as approved by the Judiciary Committee.

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<sup>48</sup> *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204-05 (1999).

<sup>49</sup> *See Browning v. Fla. Hometown Democracy, Inc. PAC*, 29 So. 3d 1053, 1057-58 (Fla. 2010).